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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/559,679

12/06/2005

Thea Gladwin

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3747

23294 7590 05/21/2008
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EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

05/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/559,679	Applicant(s) GLADWIN ET AL.	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-18 is/are allowed.
- 6) ☒ Claim(s) 10 and 12-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/11/08 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson (USP 1,977,920).

With regard to claim 10, Robinson discloses a hair clip (fig. 2) comprising two combs (10, 11) and at least one elastic member (20) resiliently to bias teeth (14) into an interleaved arrangement with one another (fig. 6, col. 2, line 58-62), each comb having opposite first and second surfaces (see fig. 3) whereby, when the teeth of the combs are interleaved from opposite directions (see fig. 6), some of the teeth of one comb overlaying and others underlaying the teeth of the other comb and such teeth being

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biased towards one another, at least some of such overlaying and underlaying teeth interact with one another to form clamps for clamping hair between the two combs (col. 2, lines 78-97). Robinson fails to show the widths of the teeth of each comb being slightly wider than widths of spaces adjacent the teeth and the teeth of each comb having tapering sides on both surfaces and the teeth being substantially elliptical in cross-section. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the widths of the teeth of each comb being slightly wider than widths of spaces adjacent the teeth and the teeth of each comb having tapering sides on both surfaces and the teeth being substantially elliptical in cross-section, since such a modification would have involved a mere change in the size and shape of the known component. A change in size and shape is generally recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). In regard to claims 12 and 13, Robinson shows the essential claimed invention except for the teeth having the substantially same width and the width of the teeth being about .5 to 2mm wider than the width of the spaces between the teeth. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the teeth having the substantially same width and the width of the teeth being about .5 to 2mm wider than the width of the spaces between the teeth, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level or ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). In regard to claim 14, the combs being made of flexible material (col. 2, lines 63, 64).

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Leslie (U.S. Design Pat. # D483,522).

With regard to claim 15, Robinson shows the essential claimed invention except for the elastic member having a plurality of beads threaded into the length of the elastic member. Leslie shows a hair device (fig. 1) comprising two combs connected to each other by a string of beads. It would have been obvious to one having an ordinary skill having an ordinary skill in the art at the time the invention was made to employ the string of beads as taught by Leslie into the combs of Robinson in order to provide aesthetic look to the device.

Claims 16-18 are allowable over prior art of record.

Response to Arguments

Applicant's argument filed 6/15/2007 that the specific shape of the teeth and the size of the width of the teeth are not merely design choice but they provide a specific utilitarian function; however, Applicant is noted that the original disclosure has not disclosed the criticality of the specific shape of the teeth and the size of the width of the teeth, therefore, it would have been obvious to one of an ordinary skill to try the specific shape and size of the teeth in order to improve the holding of the clip to the hair.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner, Art Unit 3732